BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHAUN R. HEALD	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,043,527
SPIRIT AEROSYSTEMS, INC.	)	
Respondent	)	
AND	)	
	)	
AMERICAN HOME ASSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the April 26, 2012, Post Award Order entered by Administrative Law Judge (ALJ) Thomas Klein.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for claimant. Vincent A. Burnett of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board consists of the transcript of the March 8, 2012, post-award hearing[1] and exhibits thereto; the agreed award entered on January 22, 2010, with exhibits; and the pleadings contained in the administrative file.

ISSUES

The sole issue for the Board's consideration is whether the ALJ erred in ordering respondent to provide authorized medical treatment for claimant's 2008 bilateral knee injuries.

[1] Counsel for the parties stipulated that claimant was placed under oath and testified at the post-award hearing. The stipulation was made because of a court reporting error in the hearing transcript.

Respondent contends that claimant's knee complaints and any need for treatment are not a direct and probable consequence of the 2008 injuries. Claimant contends the order should be affirmed.

FINDINGS OF FACT

Claimant sustained injuries to both knees by a series of repetitive traumas commencing in March 2010 and continuing to May 7, 2010. The injuries resulted from claimant's performance of his job duties for respondent. An Agreed Award was approved by all parties and entered by the ALJ on January 22, 2010. That award left open future medical compensation and review and modification upon proper application to and approval by the Director.

Prior to the injuries in this claim, claimant sustained a right knee injury in 2005, which was treated by an arthroscopic repair of the right medial meniscus performed by a surgeon in Maryland. The injuries in this claim were also treated surgically by Kenneth A. Jansson, M.D., an orthopedic surgeon. The procedures consisted of: 1) a right knee arthroscopy, partial medial menisectomy, and chrondroplasty of the patella, performed on July 10, 2008, and, 2) a left knee arthroscopy and partial medial menisectomy, performed on September 12, 2008.

Following the 2008 operations, and post-surgical treatment, the condition of claimant's knees improved and he was ultimately released without permanent restrictions. He returned to regular duty with respondent. After claimant's return to work for respondent his job was changed, in approximately late 2010, to one which was easier on his knees than the work claimant performed when he was injured in 2008. Claimant continued to experience pain in both knees, which he described as about the same as when he recovered from the 2008 surgeries.

After the Agreed Award was entered claimant sought medical treatment, which respondent authorized in 2011 with Dr. Jansson. Claimant saw Dr. Jansson on October 3, 2011, at which time bilateral MRIs and a bone scan were recommended. An MRI of the right knee was conducted on October 7, 2011, which revealed post partial subtotal menisectomy with no recurrent tear; minimal joint effusion; and a small full-thickness fissure in the central apex of the lateral patellar facet, extending into a small delaminating tear interposed between the cartilage and the subchondral bone of the patella. An MRI of the left knee was performed, also on October 7, 2011, which revealed small joint effusion and status post medial subtotal menisectomy with no recurrent tear. A bone scan was negative.

Dr. Jansson suggested physical therapy and discussed the possibility of a pain management referral. Regarding causation, Dr. Jansson concluded claimant's bilateral knee pain was continued pain from the 2008 injuries.[2]

Claimant became dissatisfied with Dr. Jansson and, in response, respondent authorized another physician, John R. Babb, M.D., an orthopedic surgeon, to provide authorized treatment. Dr. Babb examined claimant on December 23, 2011. He concluded:

> The patient was previously doing well and placed at maximum medical improvement. Since that time he has continued to work with no restrictions and has been doing normal activity. It is within a reasonable degree of medical probability that his current pain is not related to his work injury of May 2008.[3]

However, Dr. Babb did find that claimant has bilateral knee capsulitis and mild chondromalacia of the patella which is causally related to claimant's original injury.[4] Dr. Babb recommended treatment consisting of injections in both knees, however, he found no treatment was needed as a result of the original injuries.

Claimant filed an application for post-award medical treatment on January 18, 2012. On April 26, 2012, the ALJ entered a Post Award Order authorizing Dr. Babb to provide the treatment recommended in his report and any other treatment he deems necessary. Respondent requested review of the April 26 Order.

PRINCIPLES OF LAW

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

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[2] P.A.H. Trans. (Mar. 8, 2012), Resp. Ex. 2 at 7 (Dr. Jansson's Oct. 3, 2011 office note)..

[3] *Id.*, Resp's Ex. 1 at 10 (Dr. Babb's Dec. 23, 2011 IME report).

[4] *Id.*

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence.[5]

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act.[6] In *Jackson*,[7] the Court held:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

But the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,[8] the Court attempted to clarify the rule:

> The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.[9]

In *Logsdon*,[10] the Kansas Court of Appeals reiterated the rules found in *Jackson*[11] and *Gillig*[12]:

> Whether an injury is a natural and probable result of previous injuries is generally a fact question.

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[5] *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

[6] *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, reh. denied (2007); *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000).

[7] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[8] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

[9] *Id.* at 263.

[10] *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶ 1, 2, 3, 128 P.3d 430 (2006); see also *Leitzke v. Tru-Circle Aerospace*, No. 98,463, unpublished Court of Appeals opinion filed June 6, 2008.

[11] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[12] *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

> When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.
>
> When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to post award medical benefits.

ANALYSIS

The Board finds the ALJ correctly determined that claimant's condition and need for treatment are a natural and probable consequence of the May 2008 injuries and that claimant is entitled to authorized medical treatment.

There is nothing in claimant's testimony which supports the notion that he sustained an intervening accident or injury resulting in his current complaints of bilateral knee pain or his need for medical treatment. On the contrary, claimant testified that he did nothing at work which served to permanently aggravate the condition of the knee. There is likewise no evidence suggesting that claimant sustained additional injury away from work. Claimant testified that the pain he is currently experiencing is about the same as after his recovery from the 2008 injuries and the surgeries performed by Dr. Jansson. Claimant said he can think of nothing other than the original injuries to account for his persistent knee pain.

There is nothing in the histories provided to Dr. Babb or Dr. Jansson which provides a rational basis to casually relate claimant's continuing complaints, and the consequent need for treatment, to anything other than the 2008 injuries. Dr. Jansson opines that claimant's pain is continued pain from the 2008 injuries. Dr. Jansson's opinion is persuasive because he had the advantage of examining claimant before and after the entry of the Agreed Award.

The causation opinion of Dr. Babb is less credible because there is no apparent basis for his conclusion that claimant's complaints and need for treatment are unrelated to the 2008 injuries. Nothing in claimant's history or in the medical records supports Dr. Babb's causation opinion. Dr. Babb does not relate claimant's complaints of pain to an intervening trauma, work-related or otherwise, which could account for claimant's complaints.

The Board finds that the testimony of claimant and the records and opinions of Dr. Jansson constitute a preponderance of the credible evidence and that the ALJ correctly found that claimant's condition and need for treatment are a natural and probable consequence of the 2008 injuries. The ALJ accordingly acted properly in ordering respondent to provide authorized medical treatment.

CONCLUSION

WHEREFORE, the Board finds that the April 26, 2012, Post Award Order entered by ALJ Thomas Klein should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August, 2012.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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Thomas Klein, Administrative Law Judge